17CV 2172

IN THE UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

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ANDRE EVERTON GRANT v	
THE UNITED STATES OF AMERICA	CASE NO.

COMPLAINT FOR DAMAGES UNDER THE FEDERAL TORT CLAIMS ACT

JURISDICTION

28 U.S.C 2674; 28 U.S.C 2675; 28 U.S.C 1331; 28 U.S.C 1651; 28 U.S.C. § 1491

Federal Tort Claims Act

Federal Question Act

All Writs Act

Tucker Act

FACTS AND PROCEDURAL HISTORY

1. On October 18th 2010, I was sentenced to a term of 48 months incarceration in United States Court of Maryland. The Honorable Judge Deborah Chasanow presided over the case.

2. After sentencing Immigration and Custom Enforcement (ICE) Lodged an immigration detainer on March 29th 2011. I was then transferred to Moshannon Valley Correctional Center (MVCC). Moshannon Valley is a private facility contracted by the bureau of prisons for the confinement of inmates that have an immigration hold placed on them.
3. Upon my arrival, I was immediately interviewed by ICE to determine whether I was subject to the deportability. During my interview I informed ICE that I am a citizen of the United States, and provided documentation to corroborate my claim.
4. I was instructed to file an N-600 application for Certificate of Citizenship which I submitted on May 31st 2011.
5. The N-600 application was denied two weeks later on the 13th of June 2011. Although, the application was denied on the 13th of June 2011, I didn't receive a copy of that denial letter until December of that same year. **(Exhibit A)** Once I received that letter I am

immediately filed an appeal in December 2011. I received no answer, so I filed a subsequent N-600 application which was denied in July 2012, & I was instructed to file a motion to reopen and reconsider, because the appeal time has already pass.

6. In August 2012 I filed a Freedom of Information Act(FOIA) request with USCIS. I obtained information helpful to my case, that shows That USCIS attempted to send me a denial letter, but that letter was stamped return to sender for postage by the United States Postal Services.**(Exhibit B)** Armed with this new information I filed a subsequent I-290b application in an attempt to prove to USCIS that due to their negligence I did not receive a denial letter and was not afforded my right to appeal I received no response from USCIS, just the same as my other applications.

7. Immigration and Customs Enforcement initiated removal proceedings in May of 2012, and on July 17th 2012, I went before an immigration judge for my first appearance. The prosecution was unprepared and the IJ stated that he believed that I may be a citizen. My next appearance was in October of that year, During the hearing the immigration judge instructed my attorney to provide a brief explaining the grounds and reason as to why I acquired through derivative citizenship.

8. On December 14th 2012, ICE removed the immigration detainer in which they had previously placed on me. I went back before the IJ on February 19th 2013, the IJ administratively closed proceedings against me, based on a motion filed from the prosecution. In the motion the prosecution stated that the case of Watson v. Holder, 643

F.3d 367, 370 (2d Cir. 2011) was remanded to the BIA and they can't rule on my case until a decision is made in that case, which has similar circumstances.

9. Immediately after my hearing, I started the administrative appeals process with Moshannon Valley and the Bureau of Prisons requesting to be transferred to a community confinement Center. My appeal was denied, in the denial of the BP stated that although, the Immigration and Customs Enforcement lifted my detainer, I am still not eligible because there is still a Chance that I can be deported, and I will be supervised by ice upon my release. I filed a petition in The United States District Court for the Western District of Pennsylvania, but the magistrate concurred with the Bureau of Prisons. **(Exhibit C)**

10. After filing numerous appeals to immigration concerning my citizenship, I filed a suit in District Court under The Mandamus 1631 and Declaratory Judgment Act 1503. The magistrate dismissed the suit, in which I objected and provided evidence that shows that removal proceedings were closed at the time the suit was initiated. **(Exhibit D)** The magistrate issued a new order allowing the suit to move forward. USCIS was given 60 days to respond to my suit, in which they filed a motion to receive additional time. In July of 2013, USCIS denied another I-290 that I filed the year prior. (**Exhibit E**)

11. December 6th 2013, a few days before my release, Immigration and Customs Enforcement lodged a new detainer on me. (**Exhibit F**) After numerous calls from my attorney and family ICE canceled the detainer on December 12th 2013, one day before my release. **(Exhibit F)** After my release, I resided in Connecticut with my father due to

my status with immigration, I was left in a state of limbo, unable to work, go to school, provide for my family, or pursue the American dream.

12. In February 2014, ICE initiated removal proceedings again, and I appeared before the IJ on March 17th 2014 in Hartford Connecticut. I inform the IJ on my pending appeal with USCIS and my suit in District Court. The IJ postponed proceedings pending the final outcome of my appeals.

13. On March 24th 2014, the Board of Immigration Appeals ruled on my case. (**Exhibit G**) In their decision they stated That acquisition of citizenship occurs by operation of law and not by adjudication. And That I have met the burden of proof statutorily required. The board also noted that interpretation of statutes can have a direct Bearing on whether a person automatically acquired Citizenship. The board also mention the similarities between my case and a matter of Watson, the BIA referred to the matter of Watson as a non- precedential decision. The Board concluded that I Became a citizen on February 27th 2001 the effective date of the child Citizenship Act.

14. On March 27th 2014, USCIS responded to my complaint by filing a motion to dismiss, They stated that since the Board of Immigration Appeals recently ruled that I am a citizen there is no further Relief that the court can offer, so the case therefore is moot. (**Exhibit H**) The court issued an order for USCIS to issue a Certificate of Citizenship to me within 14 days of March 28th 2014. On April 12th 2014, I received no call or other communication from USCIS, I went into the Hartford field office to inquire. And

provided USCIS with the court order and they stated they weren't Familiar with my case and needed time to investigate. I was called in on April 16th 2014 and I received my Certificate of Citizenship on that day. (**Exhibit I**)

15. I later amended my complaint to seek damages against USCIS, that requested was denied. I was instructed by the court to file a claim with the agency before the court can make a determination. I filed a claim with USCIS on June 5, 2014, informing of the injury that was caused by them. USCIS has failed to respond to my claim within six months. I instituted this action under *28 USC § 2675,* which states "The plaintiff may, at his option, file suit at any time after the six month period of time."

CLAIM

16. USCIS was negligent in the denial of my derivative citizenship.
17. The placing and canceling of numerous immigration detainers by ICE is a negligent infliction of emotional distress.
18. Wrongful death: Due to USCIS negligence my son died in Jamaica with a sickness that would be considered curable if he was in the United States.
19. Negligence: USCIS was negligent when they failed to pay for postage when attempting to send me a denial letter.
20. Negligence : USCIS Was negligent when it denied my citizenship after a ruling and Watson vs Holder had already been made. Watson vs holder was decided in January 2013

21. Ice was negligent when they reopened proceedings after a decision was made in the matter of Watson. Especially, when they favorited closing proceedings pending a final outcome in matter of Watson.
22. USCIS was negligent when it failed to properly interpret statute in laws both in the United States and Jamaica
23. Injury claim USCIS violated my rights as a United States citizen to seek gainful employment and or go to school.
24. USCIS violated my Constitutional right to liberty (4th amendment)
25. ICE was negligent when it failed to follow the "Hayes Memorandum" and fully investigate all claims to Citizenship.**(EXHIBIT J)**

ARGUEMENT

26. On February 27th 2001, the child Citizenship Act became effective, which set forth the criteria for automatic acquisition of citizenship for children born abroad. The law states that once a child meets all the requirements, he / she is a citizen as of that day, and the individual is Not required to obtain a Certificate of Citizenship. The individual must be able to prove their status if need to do so.

27. An individual born abroad is presumed to be an alien, and bears the burden of establishing his or her claim to US citizenship by a preponderance of credible evidence See matter of Baires - Larios, 24 I&N Dec. 467, 468(BIA) See also, C.F.R 341.2(c). The burden of proof shall be on the claimant to establish his or her claim citizenship by a preponderance of the evidence. preponderance of the evidence standard requires that the record demonstrated that the individual claim is probably true based on the specific facts of each case Matter of Chawathe 25 I&N Dec. 369, 376(AAO)(citing Matter of E-M-, 20 I&N Dec. 77, 79-80(comm.1989)). Even where some doubt remains, the individual will meet this standard if she or he submits relevant problem in credible evidence that the claim is more likely than not or probably true.(citing INS v. Cardoza-Fonseca, 480 U.S. 421, 431(1987)).

28. A Certificate of Citizenship provide documentation for person who obtain citizenship derivatively. See 8 U.S.C. 1452. 9; 7C. Gordon, et al Immigration Law and Procedure 99.04. It does not confer citizenship but only furnishes evidence of one citizenship status previously vested. Applying for a Certificate of Citizenship is optional a person who has derived citizenship is not obligated to apply for one. But in the event of proof of citizenship is ever required the person may furnish independent proof of his status. Even though the BIA Changed the interpretation of legitimization related to Jamaican children I did not need to apply for a Certificate of Citizenship prior to the matter of Hinds as USCIS contends.

29. After analyzing documents, and evidence I submitted to USCIS a reasonable person would conclude that I did in fact meet the burden of proof by the preponderance of evidence.

30. In 1975 the Jamaican status of Children's Act (JSCA) became effective in which it eliminated all legal distinction between legitimate an illegitimate children. In 1981 the BIA, in matter of the Hinds, stated that "all children born in Jamaica after the effective date of the JSCA would be deemed to have been legitimated. A number of Court has taken up the issue of legitimacy as it pertains to Jamaican child Lewis v. Gonzalez, 481 F.3d 125, 131 (2nd Cir 2007) in Which the court observed that a Jamaican national whose father registered his name on the child's birth certificate was legitimated on the Jamaican law. See also Blake vs Kessler (2nd Cir Court Appeals 2007). The BIA Seeking clarification on the definition of legitimization as it is related to Jamaican law to call also instructed to BIA to consider Whether Watson was in his father custody at any time in Jamaica.

31. Prior to the decision in matter of Hinds, Vanver Vaughn Blake argued that under Jamaican law legitimization couldn't not be achieved by the marriage of both parents. The BIA and the Second Circuit Court of Appeals rejected his argument and he was deported The BIA later adopted Blake's interpretation less than one year after he was deported.

32. In 2008, the BIA change its interpretation of legitimization on the Jamaican law. On February 19th 2013, I went Before the immigration judge And immigration proceedings Were administratively closed. The government cited in the motion that a determination of my citizenship can't be made until the board make a decision of Watson. Matter of Watson was decided on January 9th 2013, before my hearing date (**Exhibit K**). USCIS and ICE are responsible for knowing all changes in law and or policy and are to fully investigate all claims of citizenship. See Hayes Memorandum(**Exhibit J)** On July 5th 2013 the USCIS denied my I 290 B motion to reopen or reconsider 6 months after this decision in matter of Watson. (**Exhibit E**)

33. The Administrative Appeals Office States and its policy that the AAO does not announce new constructions of law or establish agency policy through non president decisions. In other words an individual as myself or someone in similar circumstances will encounter significant miss justice. For example, a person apply for a Certificate of Citizenship, the USCIS field office adjudicating the application knows that the person qualifies under and a non-president decision but still denies them due to the matter of Hinds being the precidentential interpretation. An agency does not forfeit Chevron difference merely because it had considered a previous legal interpretation see National Cable & Telecom Assn vs Brand X Internet services 545 U.S. 967, 981 (2005). Agency inconsistency is not a basis for declining to analyze the agency interpretation on the Chevron framework. Unexplained inconsistency is at most a reason for holding an interpretation to be arbitrary and capricious change from agency procedure under the Administrative Procedure Act.

34. 5 U.S.C 555(e) States Prompt notice shall be given of the denial In part of a written application petition or other requests of an interested person made in connection with any agency proceeding. The notice shall be accompanied by a brief statement of the grounds of the denial. **Exhibit B** shows that USCIS was negligent in providing me with a denial letter. USCIS did in fact attempt to send me a denial letter, the issues is that they failed to pay for any postage. Exhibit blank shows that same denial letter arrived and was stamped in the national record Center on July 19th 2011. It's very unlikely that USCIS accidentally forgot to place postage on my denial letter and remembered to pay for postage for the national record center.

35. When appealing a decision made by USCIS a denial letter is a necessity, and is submitted with form I-290B. 8 CFR 103.5 provides that motion to reconsider must establish that decision was based on an incorrect application of law or service policy. 8 CFR 103.5(a)(3) And must be made within 30 days of the decision that the motion seeks to reconsider Id 103.5(a)(i)(i). Motion to reopen must state new facts to be provided in the reopening Procedures ID 103.5(a)(2) and must be made within 30 days id 103.5(a)(1)(i).

36. However immigration authorities may excuse in their discretion an untimely motion to reopen "where it demonstrates that the delay was reasonable and was beyond the control of the applicant or petitioner"

37. Due to the negligence of USCIS I was unable to timely and effectively appeal my denial, Once I did receive that denial letter I was able effectively to appeal.

4th Amendment Violation

38. In my lawsuit against the BOP, the government admitted that once released from custody I will be on ICE parole and under their supervision. Under Connecticut Law, "Claims for false arrest ... , brought under [Section] 1983 to vindicate the Fourth and Fourteenth Amendment right to be free from unreasonable seizures, are 'substantially the same' as claims for false arrest ... under state law." Jocks v. Tavernier, 316 F.3d 128, 134 (2d Cir. 2003); Davis v. Rodriguez, 364 F.3d 424, 433 (2d Cir. 2004) ("In analyzing § 1983 claims for unconstitutional false arrest, courts have generally looked to the law of the state in which the arrest occurred."). Under Connecticut law, "'[f]alse imprisonment, or false arrest, is the unlawful restraint by one person of the physical liberty of another.'" Russo v. City of Bridgeport, 479 F.3d 196, 204 (2d Cir.) (quoting Outlaw v. City of Meriden, 43 Conn. App. 387, 392, 682 A.2d 1112, 1115 (1996), cert. denied, 522 U.S. 818 (2007)). "[T]he applicable law for [false arrest and false imprisonment] is identical." Outlaw, 43 Conn. App. at 392.

39. "[A] Fourth Amendment seizure [occurs] . . . when there is a governmental termination of freedom of movement through means intentionally applied." (internal quotation marks and emphasis omitted)); *Oliver*, 510 U.S. at 274, 114 S.Ct. 807 (plurality opinion) ("The Framers considered the matter of pretrial deprivations of liberty and drafted the Fourth

Amendment to address it."). And while "courts have *generally* looked to the law of the state in which the arrest occurred" in analyzing § 1983 claims based on the Fourth Amendment, *Davis,* 364 F.3d at 433 (emphasis added), the scope of the Fourth Amendment's protection against "unreasonable" seizures is, of course, not limited to state law.

40. The BOP and The District Court of Pennsylvania noted that after my release, I will be placed on Supervision by Immigration and Customs Enforcement. As part of that Supervision, my freedom and movements were restricted. This Action violated my civil liberty under both Connecticut laws and the Fourth Amendment. These actions placed me in a state of limbo, I was unable to work, go to school, provide for my family, or pursue the American dream.

41. As a United States Citizen, I was illegally confined by ICE, ICE and USCIS failed to properly investigate my claim to Citizenship.

42. The death of my son in Jamaica is a violation to of his Fourth Amendment rights to life and Liberty. While in custody, I filed an N-600 application for a certificate of Citizenship with ICE. The application was returned, and I was informed that I couldn't file the application until there is a decision in my case.

43. Matter of Watson was decided on January 9, 2013, My son died on July 4th 2013. The Government knew of the decision in Watson for nine months, but didn't act upon it.

Under Immigration Laws my son derived Citizenship from me, and was entitled to come to the United States in order to get proper medical attention.

PRAYER FOR RELIEF

44. WHEREFORE, the Plaintiff demands for judgement damages against the United States in the amount of $10,040,029. Which includes the following:

45. Costs of defending against deportation in the amount of $ 40,029;

46. Emotional distress in the amount of 10,000,000 suffered by the United States when the plaintiff was denied his rights as a United States Citizen, and the passing of his son;

47. I also ask the court to take a look at the constitutionality of the Board of Immigration Appeals policy as it pertains to precedence and Non-precedent decisions, and issue an injunction for the BIA to make my case A precedential decision.

48. Plaintiffs further are entitled and do hereby seek recovery of all costs and attorney's fees incurred by Plaintiffs in this civil action, together with for such further and additional relief at law or in equity that this Court may deem appropriate or proper.

Respectfully submitted,